In the Supreme Court

of the United States

OCTOBER TERM, 1978

No. 78-1418

WILLIAM E. BLOOMER, JR.,

Petitioner,

against

LIBERTY MUTUAL INSURANCE COMPANY,
as subrogee of
CONNECTICUT TERMINAL COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF AMICUS CURIAE MASTER CONTRACTING STEVEDORE ASSOCIATION OF THE PACIFIC COAST, INC.

DENNIS LINDSAY
ROBERT BABCOCK
1331 S. W. Broadway
Portland, Oregon 97201
(503) 226-1191
Attorneys for Amicus Curiae Master Contracting Stevedore Association of the Pacific Coast, Inc.

LINDSAY, NAHSTOLL, HART,
NEIL & WEIGLER
Of Counsel

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 799

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Master Contracting Stevedore Association of the Pacific Coast, Inc. is a trade association of the 26 member firms who provide substantially all contract stevedoring services at California, Oregon and Washington ports.

All members of the Association employ longshoremen and secure the payment of compensation for their employees pursuant to the Longshoremen's and Harbor Workers' Compensation Act. The Association and its members are vitally concerned that the Act and its

1972 amendments be applied in accordance with the intent of Congress.

For years prior to the enactment of the 1972 amendments to the Act, the Association and its members joined with other maritime industry groups in testifying on bills which culminated in the 1972 amendments to the Act. In exchange for its support of a substantially increased employee benefit structure, the Association sought to eliminate third party actions by longshoremen against vessels based upon the "warranty of seaworthiness" and, most importantly, the resultant indemnity actions by vessels against stevedore employers.

The primary purpose of the Association's support of the 1972 amendments was to reduce the expenses of frequent litigation which, as both Senate and House of Representatives Reports summarizing the 1972 amendments recognized, had

> ". . . seldom resulted in a real increase in actual benefits for injured workers." (S. Rep. No. 92-1125, 92nd Cong., 2nd Sess. at 4 (1972))

A major expense of the litigation (nearly always three-way with three sets of attorneys) was legal fees. The amendments sought to remove stevedores from third-party cases and to free monies previously paid lawyers for payment of actual benefits to employees.

The position advanced by Petitioner would impose upon stevedores substantially the same legal expenses and burdens that the 1972 amendments sought to remove.

Consent to file this brief has been granted by Petitioner and Respondent.

SUMMARY OF ARGUMENT

The Second Circuit's conclusion should be upheld. A reversal of the Second Circuit's conclusion — which would require reduction of the lien in order to provide greater fees to attorneys for those injured workers who elect to step outside the compensation framework and settle their third party actions without consent of their employers — will have the following effects:

(a) Such a reversal will provide an incentive to injured workers and their lawyers to trade the protections afforded by the Act and thought necessary by Congress for the "quick money" available from unapproved settlements;

(b) Such a reversal will provide an incentive to employers to lower their lien and resulting contribution by restricting voluntary payments of compensation benefits to the lowest possible level; and

(c) Such a reversal will provide an incentive for the marginal third party actions which the 1972 amendments sought to discourage.

When viewed against the background of actual practice, the Second Circuit's decision denying the requested fee apportionment is seen as a valid means of assuring that employers' compensation funds will be available for all injured workers.

In large part, this proceeding raises an issue already considered by this Court in *Edmonds* v. *Compagnie Generale Transatlantique*, — U.S. — (June 27, 1979). In *Edmonds*, shipowner's attack on the integrity of the stevedore's lien reimbursement rights was rejected. Petitioner here mounts a similar attack, arguing that portions of the stevedore's lien should be devoted to defraying the costs of a particular third party action. As in *Edmonds*, the attack on the lien should be rejected. The lien amounts should be fully repaid and later available for the delivery of compensation benefits to injured workers.

THE FRAMEWORK

Until 1972, most "time loss" injuries to longshoremen resulted in action against the vessel. Typically, the action was brought during the period when the longshoreman and his family were subsisting on a weekly compensation benefit of $70 per week. With the assistance of *Sieracki's*[1] unseaworthiness remedy, the prospects for recovery were excellent.

The shipowner was seldom the true "defendant in interest." Comforted by the realization that *Ryan*[2] and its progeny provided a similarly excellent route to indemnification and aided by business realities, most vessel owners successfully tendered the defense of the longshoreman's action to the longshoreman's employer

[1] *Seas Shipping Co.* v. *Sieracki*, 328 U.S. 25 (1946).

[2] *Ryan Stevedoring Co.* v. *Pan Atlantic S.S. Corp.*, 350 U. S. 124 (1956).

— a stevedore company in large part dependent upon the shipowner for continued economic survival.[3]

Despite case headings reflecting a worker versus foreign shipowner dispute, the actual opponents were the compensation-receiving employee and the compensation-paying employer.

Faced with the choice between a probable adverse judgment or settlement, most stevedores opted for the latter and through highly expensive insurance funded the following costs of their employees' injuries:

(1) Direct payment of compensation and medical benefits pursuant to the Act;[4]

(2) Direct payment of the ultimate third party settlement or judgment to the longshoreman;

(3) Direct payment of the stevedore's attorneys' fees;

(4) Direct payment of the shipowner's fees incurred in initial defense efforts; and

(5) Indirect payment of the longshoreman's attorneys' fees.

[3] Association members accepted the defense tenders in the majority of cases. The scoreboard of cases involving rejected tenders offers eloquent support for the wisdom of acceptance.

[4] This amount was technically "recouped" by the stevedore via repayment out of the litigation recovery which it funded. The total amount was of minimal significance. The total of temporary disability benefits paid at a maximum of $70 per week did not even approach the total benefits paid at an average rate of approximately $350.00. The amounts at issue in this proceeding total millions.

Drained by the amounts being paid to attorneys (their own, shipowners', and plaintiffs'), the stevedores resisted long overdue increases in compensation benefit levels, arguing that increases could be borne only if the costs of litigation were removed. *Cella* v. *Partenreederei MS Ravenna*, 529 F.2d 15, at 20-21 (1st Cir. 1975), cert. den. 425 U.S. 975 (1976).

In 1972, Congress agreed that this litigation had provided no real increase in benefits for injured workers, accepted the arguments advanced by stevedores, and, in return for the stevedores' agreement to pay much higher benefit levels, took action to both restrict the frequency of litigation and assure that stevedores would no longer bear the expense of what litigation remained permissible. Senate Report No. 92-1125, 92nd Cong., 2nd Sess., pp. 4-5 (1972).

Despite differences among the various Circuits regarding the legal standards necessary to support vessels' third party liability, it is clear that the frequency of litigation has declined. This Court has recently affirmed Congress' intent to effectively insulate stevedores from what litigation remains. *Edmonds* v. *Compagnie Generale Transatlantique, supra.*

The typical post-1972 injury no longer results in expensive and protracted litigation. The Act's benefits are both generous and prompt. Disputes are resolved within a more speedy administrative arena in which participation by able plaintiffs' attorneys is amply rewarded.[5]

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[5] A short review of the many "attorneys' fee" decisions

The minority of injuries resulting in litigation now present a different pattern. Shipowners must actually defend, rather than simply seek indemnity. The plaintiff's prospects for a recovery exceeding the Act's remedies have been lessened. The stevedores stay out of the courtroom.

However, part of the litigation process remains unchanged. Cases are still resolved by only two routes — settlement and judgment.

Judgment assures the successful plaintiff's attorney of his full contractual fee, be it 25%, 35%, or 50%, of the amount recovered. Whatever the trial's result, the longshoreman remains assured of his *full* compensation entitlement.[6]

Settlement of litigation is properly treated separately and may take one of two different forms.

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issued by the Benefits Review Board demonstrates that all contested cases resulting in a compensation award higher than earlier offered by the employer are followed by an assessment of an additional amount for the claimant's attorneys' fees. The assessed fees are substantial, averaging $80 to $100 per hour on the West Coast.

[6] 33 USC §933(f) applies whenever a third-party action proceeds to judgment or is settled with the employer's formal consent and requires the Secretary of Labor to determine the extent of the employer's further compensation liability — the so-called "deficiency exposure."

This determination necessarily requires the Secretary to ascertain the difference between (a) the total amount payable to the longshoreman as a result of his injury pursuant to the Act and (b) the "amount recovered against" the third party. The Secretary and his Deputy Commissioners have consistently ruled that the amount "recovered against" the third party is determined *after* deduction of the employee's attorneys' fees. See *Voris* v. *Gulf-Tide Stevedores*, 211 F.2d 549 (5th Cir. 1954).

If the longshoreman's attorney successfully negotiates with the stevedore and obtains a formal written approval of the proposed settlement, the plaintiff's attorney again receives his agreed fee — 25%, 35%, or 50% of the settlement funds paid by the shipowner. And, again, the longshoreman remains assured of receiving the full benefit afforded him by the Act.[7]

It is only where the stevedore's formal written approval to the proposed settlement is not obtained that disputes such as this arise because only *unapproved* settlements effectively terminate the longshoreman's remaining compensation entitlement and remove the worker from the Act's protective framework. 33 USC §933(g).

ARGUMENT

Viewed against this necessary background, this Amicus suggests that the "Question Presented For Review" is far too broadly phrased by Petitioner Bloomer,[8] and that, more correctly phrased, the Question should read as follows:

> "When a longshoreman *settles* his action against a shipowner *without* first negotiating for and obtaining his employer's formal consent to the proposed settlement, is his attorney entitled to additional fees because his efforts for his client also satisfy an existing equitable lien?"

[7] As in the case of litigation terminated by judgment, the longshoreman who negotiates settlement with his employer's formal written consent remains entitled to the Act's benefits, offset by a "credit" determined *after* deduction of the fees and expenses of trial.

"This is essential to effectuate the statutory purpose of giving the worker his minimum benefit." (*Strachan Shipping Co.* v. *Melvin*, 327 F.2d 83, at 89 (5th Cir. 1964) (J. Brown, Dissenting).

This Amicus suggest that an affirmative answer to this question will serve as an incentive only to the marginal litigation sought to be reduced by Congress, will encourage "quick money" settlements contrary to the injured workers' long-term interests, and will require stevedores to partially fund exactly those costs for which Congress thought insulation necessary.

A negative answer to this question will neither foreclose injured longshoremen from able representation nor need it work an inequitable recovery allocation.

Each of the positions advanced by this Amicus are discussed more fully below.

The Equities Support Full Lien Reinbursement

The distribution of the $60,000 settlement proceeds involved in this proceeding is outlined at page 7 of Petitioner's Brief:

[8] Petitioner Bloomer phrases the question with the following language:

"When a longshoreman's suit against a shipowner results in a recovery exceeding the workmen's compensation lien, does the stevedore-employer (or compensation insurance carrier) recover its entire lien from the longshoreman's recovery, or must it share proportionately in the longshoreman's costs of obtaining that recovery, including attorneys' fees?" (Petitioner's Brief, p. 6)

"Recovery	$60,000.00
Less Expenses:	(202.80)
Balance for Distribution	59,797.20
Less Fee of One-Third	(19,932.40)
Balance	39,864.80
Less Entire Lien of Liberty Mutual	(17,152.83)
Net to Mr. Bloomer	$22,152.83"

This Amicus suggests that a more appropriate procedure would have excluded the lien amounts from the base used for computing the contingent fee. After all, the payments to Mr. Bloomer comprising the lien were mandated by Congress — not achieved by the attorneys' efforts.

If distributed in accordance with this Amicus' suggestion, the attorneys' fees would have totaled $14,-213.37, and Mr. Bloomer's net recovery would have increased to $28,362.20 — approximately the same amount which will result if the additional amounts sought here are awarded.

Petitioner's attempt seeks no more money for Mr. Bloomer than would be payable under at least one "reasonable" allocation procedure. Instead, it seeks more money for Mr. Bloomer's attorneys than would result from the suggested approach, and seeks that additional amount from the stevedore's compensation insurance carrier.

Two arguments are advanced in support of this attempt: (a) That a greater fee is necessary to draw able plaintiffs' lawyers into the arena, and (b) that the equity-based "common fund" doctrine requires all beneficiaries of the litigation to contribute to its costs.

The "necessity" issue has vitality only in the context of "small or routine" cases — the marginal litigation discussed at pages 12-14, *infra.* It is clear that a fee of over $14,000 — the amount payable if the agreed percentage fee were applied only to the recovery actually achieved by Mr. Bloomer's attorneys — is sufficient to procure many able lawyers.

The surface plausibility of the equitable or "common fund" argument[9] is dispelled if the realities of third party litigation are considered.

The ultimate measure of settlement is the bottom line — the "new money" amount payable to the plaintiff. $22,152.83 was a sufficient "new money" recovery for Mr. Bloomer. Thus, a total settlement of slightly over $33,000 (including Mr. Bloomer's attorneys' one-third fee) would have sufficed to settle Mr. Bloomer's action had there been no lien repayment obligation at all.

However, the presence of the repayment obligation and the decision to base the attorneys' fees on the *gross* amount payable by shipowner mandated a $27,000 increase in the "gross" in order to achieve the same "net." Mr. Bloomer's attorneys received $9,000 from that increase, bringing their total fee to almost $20,000.

In short, Mr. Bloomer's attorneys (and, presumably, Mr. Bloomer) have already benefitted greatly

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[9] Because the current vitality of the "common fund" doctrine is more squarely at issue in another proceeding now pending before this Court, *Boeing Co.* v. *Van Gemert,* No. 78-1327, review granted May 14, 1979, this issue is discussed only briefly.

from the lien — at shipowner's expense. The question is whether they are entitled to further benefits — this time at the expense of the stevedore which has fulfilled both its obligation to its employee and its duties of compliance with the requirements of the Act.

This Amicus suggests that further benefits should be denied and both "equity" and the purposes of the Act are furthered if *all* of the amounts paid to Mr. Bloomer as compensation are repaid to the stevedore's carrier.

The Requested Additional Payments Will Encourage Marginal Litigation.

One argument advanced in favor of Petitioner's allocation proposal is that a contrary approach would discourage litigation and, indirectly, remove one source of funding compensation benefits for other injured workers. *Brown* v. *American Mail Line, Ltd.*, 437 F. Supp. 628 (D. Or. 1977), appeal pending, Docket No. 78-1053, Ninth Circuit Court of Appeals.

The plaintiffs' bar echoes this position, noting that

> "... And in fact it is only in a third party damage recovery that the employee *and* employer can recover their losses and spread the costs of injury. . . ." (Brief of Amicus Association of American Trial Lawyers, p. 22)

Denial of additional recovery *will* discourage some litigation. However, this Amicus suggests that the only litigation discouraged will be that offering only a marginal likelihood of a dollar recovery exceeding the Act's compensation guarantees.

The Brief submitted on behalf of the plaintiffs' bar recognizes that only marginal litigation will be discouraged.

> ". . . Unless a lawyer receives a fee out of the compensation lien recovery, the *routine or small third party action* may not be prosecuted to its fullest extent." (Brief of Amicus Association of American Trial Lawyers, p. 21, Emphasis added.)

Discouraging marginal litigation is exactly what Congress intended.

> "The Committee heard testimony that the number of third-party actions brought under the *Sieracki* and *Ryan* line of decisions has increased substantially in recent years and that much of the financial resources which could better be utilized to pay improved compensation benefits were now being spent to defray litigation costs. Industry witnesses testified that despite the fact that since 1961 injury frequency rates have decreased in the industry, and maximum benefits payable under the Act have remained constant, the cost of compensation insurance for longshoremen has increased substantially because of the increased number of third party cases and legal expenses and higher recoveries in such cases. The Committee also heard testimony that in some cases workers were being encouraged not to file their claims for compensation or to delay their return to work in the hope of increasing their possible recovery in a third party action. The Committee's attention was also called to the decision in 1976 of the United States District Court in Philadelphia concerning the impact of third party claims involving

injured longshoremen on the backlog of personal injury cases in that Court." (Senate Report No. 92-1125, 92nd Cong., 2nd Sess., at 9 (1972).)

Where the probable recovery substantially exceeds the benefits provided by the Act, third party actions will be prosecuted without additional incentives. Where the probable recovery is itself an insufficient incentive, the prosecution of "routine or small" third party actions should be discouraged.

Acceptance of Petitioner's Allocation Proposal Will Encourage Short-Sighted "Quick Money" Settlements and Threaten the Act's Goal of Prompt and Voluntary Payments of Compensation.

Petitioner suggests that the earlier rulings rejecting the attempt here presented are no longer applicable because of the erasure of stevedore indemnity exposure in 1972. According to Petitioner, the employee and his employer now occupy the "same side" with a common interest in third-party recoveries and, therefore, a common obligation to pay the costs of creating the recovery.

Although this position ignores the business realities inherent in any process pitting a seller of services (the stevedore) against his sole market (shipowners), it does possess an element of truth. At least for the short run, many employers would welcome a procedure increasing the number of cases in which total compensation costs are limited to only a portion of the temporary benefits actually paid and future exposures, such as liability for permanent disability, future medical

benefits, and possible later worsening of medical conditions are foreclosed.[10]

However, it is clear that Congress felt that the Act — and not its avoidance — offered the best protection to injured workers.

If Petitioner is correct that the Circuit Court's ruling will discourage unapproved settlements and ~~encourage~~ "routine or small third party actions", that ruling should be applauded. The Circuit Court's ruling will also help assure that Congress' overriding goal — that all injured workers receive *at the least* the benefits of the Act — is achieved.

The Act guarantees future medical treatment and remedies for worsening of medical conditions. These benefits are of substantial but future and uncertain value. These benefits are lost whenever unapproved third-party settlement is effected. It is all too easy for claimants and their attorneys to trade the Act's future guarantees for present-day cash. The short-sightedness of human nature needs no further encouragement.

Not only may the requested additional monies encourage possibly ill-considered settlements by those longshoremen who elect to settle third party actions

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[10] It must be understood that the lien seldom reflects the employee's total compensation entitlement. Instead, most often the lien is only the *temporary* disability payments and medical expenses paid by the employer prior to judgment or settlement. The determination of the amount of the lion's share of the compensation payable — compensation for *permanent* disability — is usually postponed pending the third party litigation. Settlement without the employer's consent terminates future entitlement. Both judgment and settlement with consent leave future rights intact.

without their employer's consent, award of the requested additional amounts will also threaten the delivery of compensation benefits to other workers who (a) either do not possess or do not assert third party entitlement or (b) conclude their third party actions within the Act's framework.

The Act is premised upon the concept of *voluntary* benefit delivery. Petitioner's proposal could threaten that essential premise.

Employers who are forced to watch the dollars Congress mandated they pay to employees ultimately end in the hands of attorneys may take all lawful efforts to assure that this perceived misallocation is minimized. The misallocation of funds can be minimized only by restricting the ultimate lien to the lowest possible level. The lien amount can be restricted only by lowering (by more frequent contest) the amounts of compensation or medical benefits delivered to the workers on a voluntary basis.

Any lessening of the incentives for prompt and voluntary payments will harm the majority of injured workers who elect to stay within the Act's ambit and benefit only the minority (and their attorneys) who resolve third party actions without their employer's consent.

The Circuit Court's Ruling Creates No Anomaly In Comparison With Other Compensation Laws.

The primary position advanced by the plaintiffs' bar appears to be that a denial of additional amounts

would be contrary to the overwhelming weight of authority in "nearly all of the heavily industrialized states."[11] The position is incorrect.

Most states *do* provide some form of fee apportionment in third party actions brought by compensation recipients. This Act also provides a similar system for those third party actions which proceed to judgment or settlement *with* the employer's written consent. Under this Act, all costs of the third party action are deducted before determining the amount of the employee's further compensation entitlement. See 33 USC §933(f) and (g). This automatically assures "apportionment."

Thus, whenever the *gross* third party recovery obtained from the shipowner through judgment or approved settlement is less than the employee's total compensation entitlement (including the amounts paid prior to the date of the third party settlement and the value of future entitlement as determined by the Secretary of Labor), *all* expenses of the third party litigation — including all attorneys' fees — are effectively paid by the employer.

Assuming that the contingent fee agreement entered into between the injured worker and his attorney calls for a one-third fee, the fees are shared between 100% and 150%, and it is only when the *gross* proceeds of the third party action closed by judgment or approved settlement exceed 150% of the compensation

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[11] Brief of Amicus Association of American Trial Lawyers, pp. 3-12.

entitlement (again, as determined by the Secretary of Labor) that the employee bears the full cost of the litigation. At that point, *only* the employee benefits from each incremental settlement or judgment dollar.

It is readily apparent that the stevedore does share in the total costs of providing recompense for the injury until that point where the shipowner's agreed or adjudged liability equals at least 150% of the worker's total compensation entitlement.

As interpreted by the Second Circuit, the only injured employee not receiving a *very* substantial recovery[12] required to pay his own costs of litigation is the worker who undertakes settlement without first obtaining his employer's formal written consent.

In a sense, the Second Circuit's decision requires Mr. Bloomer to pay a penalty — or, at the least, to be treated differently — for his decision to settle without his employer's consent. Some states impose a much

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[12] For example, if a 40-year old full-time longshoreman earning the average West Coast wage of $26,443 (1978) sustains a back strain sufficient to support a 10% permanent partial disability award (an exceedingly common "rating") the discounted (at 6%) "present value" of his award approximates $25,000 — payable in addition to his temporary disability and medical care benefits.

Assuming that the worker remained off work for four months and incurred medical bills of $500, the total value of his compensation entitlement exceeds $31,000.

Further assuming a 33-1/3% contingent attorney's fee agreement, the worker would pay all of his own fees only if the judgment or approved settlement exceeded $46,500. A large number of third party actions involving similar facts and divergent assessments of fault would, if tried, result in judgments substantially below the compensation valuation.

more severe penalty for that decision — the compromise with the third party is void unless made with the employer's approval.[13]

CONCLUSION

One of the earliest decisions considering the question here presented is *Fontana* v. *Pennsylvania R.R.*, 106 F. Supp. 461, aff'd. *sub nom Fontana* v. *Grace Lines, Inc.*, 205 F.2d 151 (2nd Cir. 1953), cert. den. 346 U.S. 866 (1953),[14] (issued prior to *Ryan, supra*, and, therefore, at a time when longshoreman and stevedore possessed a "common" interest in the third party recovery).

In that decision, the Second Circuit found no reason for distinguishing third party actions brought by the stevedore from those brought by the longshoreman, recognized a commonality of interest in the third party recovery, and (in accordance with the "common fund" doctrine) charged the costs of obtaining the recovery against the "fund" itself.

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[13] See, for example, Oregon's provision:
"Any compromise by the worker or other beneficiaries or the legal representative of the deceased worker of any right of action against an employer or third party is void unless made with the written approval of the paying agency or, in the event of a dispute between the parties, an order of the board. . . ." (ORS 656.587)

[14] In this decision, as in all others considering the question, there is no mention of what this Amicus believes is a very significant factor — the distinction between judgments and approved settlements, on the one hand, and "unapproved" settlements, on the other. The distinction exists and should be recognized; it was struck by Congress as part of a comprehensive compensation system.

There *is* no reasonable basis for distinguishing actions brought by the employer from those brought by the employee *and* settled with the employer's consent or taken to judgment because, in both cases, the interests of the employer, the employee, *and* the Act coalesce.

Where, however, the settlement is concluded without the employer's consent, the interests of the employer and the employee (however "common" they may be) diverge from those public interests reflected by Congress and this Act. The Second Circuit's ruling satisfies those public interests by assuring that the maximum possible amounts remain available for redistribuition to other injured workers.

The Secretary's procedure for determining the "deficiency exposure" potential present in every third party judgment and approved settlement case echoes the procedure outlined at 33 USC §933(e) (the statutory allocation formula for *assigned* third party actions) in every respect but one. Perhaps recognizing a need for contingent fees in cases brought by the employee, the Secretary deducts the *full* fee agreed to by the employee in determining the deficiency exposure facing the stevedore but controls the amount of the fee deductible in determining the amount payable to the employee out of the proceeds of an *assigned* third party action.

Had Mr. Bloomer settled his action with approval, the proceeds would have been distributed as follows:

Recovery	$60,000.00
Less Fees and Expenses:	(20,135.20)
Balance:	$39,864.80
Less Lien:	(17,152.83)
Net to Mr. Bloomer:	$22,711.97[15]

The stevedore would have received a "credit" against its future compensation liability in the amount of the "net". Mr. Bloomer would have remained entitled to all further benefits, commencing when the "credit" was exhausted. By electing a procedure which both continued his compensation entitlement and assured full lien repayment, Mr. Bloomer would have paid a price — the costs of the litigation — for his continued benefits.

At trial below, however, Mr. Bloomer elected to step outside the Act's protective framework and give up his future benefits by settling without his employer's consent. He was undoubtedly advised that the chosen procedure foreclosed all further recovery for his injury. He must have viewed the amount he has already received as sufficient recompense for *both* his third party action *and* his remaining compensation entitlement.

Now Mr. Bloomer seeks to gain additional amounts from his employer's compensation carrier. In short, he seeks a reward for stepping outside Congress' framework. His attempt should be rejected. The availability of an additional source for third party recoveries will

[15] This is the same amount actually received by Mr. Bloomer in accordance with the Second Circuit's ruling.

only encourage marginal litigation and increase the numbers of cases settled outside the Act.

Any unfairness to Mr. Bloomer inherent in the allocation system approved by the Circuit Court could have been resolved by excluding the lien amounts from the base "recovery" used for computing the amount of Mr. Bloomer's attorneys' fees. That procedure would have achieved the following distribution:

Recovery:	\$60,000.00
Less Fees and Expenses:	(14,484.97[16]
Balance for Distribution:	\$45,515.03
Less Lien:	(17,152.83)
Net to Mr. Bloomer:	\$28,362.20

If distributed in the manner above, (a) Mr. Bloomer would receive almost exactly what he seeks here, (b) his attorney would receive exactly what he contracted for — one-third of the amount attributable to his skills and effort, *and* (c) the stevedore's funds would be fully repaid and available for delivery to other injured workers.

[16] Computed at 33-1/3% of the amount gained by the litigation — the difference between the gross recovery and the amounts previously paid pursuant to the Act.

The distribution here suggested by this Amicus is consistent with the policies underlying all compensation systems and reflected in the 1972 amendments to this Act. Perhaps more importantly, it is fair.

Respectfully Submitted,

Dennis Lindsay
Robert Babcock
1331 S. W. Broadway
Portland, Oregon 97201
503-226-1191

Lindsay, Nahstoll, Hart,
Neil & Weigler
Of Counsel

CERTIFICATE OF SERVICE

This is to certify that on the 24th day of August, 1979, copies of this Brief were served on:

Alan C. Rassner, Esq.
Rassner, Rassner & Olman
Counsel to Petitioner
15 Park Row
New York, New York 10038

Douglas A. Boeckmann, Esq.
Semel, McLaughlin & Boeckmann
Counsel to Respondent
10 Rockefeller Plaza
New York, New York 10020

Paul S. Edelman, Esq.
Counsel for Amicus Curiae Association of Trial Lawyers of America
99 Park Avenue
New York, New York 10016